found in a former proceeding: 'Once this is done, then, so long as the finding stands if there be any subsequent litigation between the same parties no allegations legally inconsistent with the finding may be made by one of them against the other.' A similar approach is shown in the case of *Sealfon* v. *United States*." (5)

Now the acquittal of the respondent in Summons Case No. 5 of 1964 on a charge of making a false or incorrect statement on the 1st day of October 1955 to the effect that he had disclosed all his assets in his statement of assets and liabilities amounts to a finding that up to that date he was unaware that any item of assets had been omitted from the statement. That issue between the parties must therefore be regarded as determined and settled for all times by the acquittal of the respondent.

In the instant case, however, the prosecution is attempting to re-litigate that issue by trying to prove that before the 1st day of October 1955, to wit, on the 14th of April 1954 the respondent was aware of the omission of the five bank accounts from the same list of assets and liabilities which was put in evidence in Summons Case No. 5 of 1964. Awareness is an essential ingredient of the charge for if he was not aware of the omission the question of wilfully making a false certificate of disclosure will not arise. In my opinion, any attempt by the prosecution to re-open the issue would be barred by the principles of issue estoppel as well as *res judicata.*

The learned president in acquitting the respondent has in fact acted on the principle of issue estoppel. The principle of issue estoppel as far as I am aware has not been applied to criminal proceedings by the courts of England or of this country. But I see no reason, whatever, why that principle should not be applied to criminal trials in this country. In the first place, if that principle had not been applied by English courts, the reason is not because the principle is unsound but because of certain technical difficulties in applying it in the conditions prevalent in England. A large category of crimes are tried by jury in England who do not as a general rule decide on specific issues but merely return a verdict of guilty or not guilty. In this country, however, only a few crimes are triable by a jury but even if jury trials are not conducive to the application of the principle, I see no reason why the principle should not be applied in respect of those criminal proceedings where the issues are well defined and easily ascertainable. In the second place, despite the prevalence of jury trials, the principle has found acceptance in other countries where the English legal system prevails. And lastly, the High Court in the exercise of its inherent jurisdiction has the power to prevent any abuse of its process. To attempt to re-litigate an issue which had been litigated on and determined by a court of competent jurisdiction would in my opinion be an abuse of the process of the court.

I have had the advantage of reading the record of trial in Summons Case No. 5 of 1964. In that case the respondent gave evidence to show that through no fault of his own the firm of accountants who had prepared his statement of assets and liabilities had omitted to disclose the relevant bank accounts; and that when he signed it the contents had not been fully explained to him because of a sudden heart attack. Even if in the opinion of the prosecution that story is untrue, as long as the acquittal stands unreversed by an appeal court, the finding of a court of competent jurisdiction cannot be challenged in another trial. The finding of fact in Summons Case No. 5 of 1964 was to the effect that even as late as the 1st of October 1955 the respondent was not aware that the five bank accounts had been omitted from his statement of assets and liabilities.

The nature of the evidence required to prove the charge in the instant case must be to the effect that the respondent was aware of the omission in 1954. If that evidence is accepted then the acquittal in Summons Case No. 5 of 1964 would be proved to be wrong for if the respondent was aware of the omission in 1954 he must have been aware of it in 1955. I think that the difficulties of the prosecution stem from the fact that they had chosen to proceed with the disposal of the cases in the order of their serial numbers rather than in the chronological order of events The position now is that to prove the charge in the instant case the prosecution will have to call evidence which would controvert the acquittal in Summons Case No. 5 of 1964. This they are not entitled to do by virtue of the judgment in *Sambasivam's* case *supra* based on the doctrine of *res judicata.*

The appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*

HASHIM & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Thye F.J.) January 5, 1966]

[K.L. — Selangor Criminal Appeal No. 63 of 1965]

Criminal Law and Procedure — Trial — Appeal — Grounds of judgment — Sufficiency of — Prevention of Corruption Act, 1961, s. 15(4).

The appellants had been convicted of offences under the Prevention of Corruption Act, 1961. The president of the sessions court in his grounds of judgment merely stated that the story of the appellant had cast no doubt on the prosecution story and that he was convinced beyond doubt that there was a conspiracy between them to cheat the Federation Government.

Held: the grounds of decision were insufficient as the learned president had not stated his findings of fact and therefore the convictions must be quashed.

Cases referred to:—

(1) *Balasingham* v. *Public Prosecutor* [1959] M.L.J. 193, 194.

(2) *Augustine* v. *Public Prosecutor* [1964] M.L.J. 7.

(3) *Oliver* v. *Ashman* [1961] 3 W.L.R. 669, 682.

CRIMINAL APPEAL.

Hussein Onn for the 1st appellant.

Dato' David Marshall (*S. Kulasegaran* with him) for the 2nd appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: The first appellant is an enforcement officer of the Rural and Industrial Development Authority. When the transaction for which he was charged took place he was a representative of Federal Publications Limited, Singapore, residing in Batu Pahat, Johore, and had never been engaged previously on any public works contract. The charge against him was:

"That you on 6.4.64 at District Office, Ulu Langat in the District of Ulu Langat, in the State of Selangor. knowingly gave Chew Kim Joo who was an agent of the Government of the State of Selangor to wit, a financial clerk in the District Office, Ulu Langat, a document, to wit, Indent No. 13/64 in respect of which the principal was interested and which document contains a statement which is false in material particular namely it stated that the work had been completed when in fact it had not been performed and which to your knowledge was intended to mislead the principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961."

The second appellant at the relevant time was the District Officer of Ulu Langat, Selangor; his wife and the wife of the first appellant are sisters, and the charge against him was:

"That you on 6.4.64 at District Office, Ulu Langat in the District of Ulu Langat, in the State of Selangor, being an agent of the Government of the State of Selangor, to wit, a District Officer of Ulu Langat District, knowingly used with intent to deceive your principal, a document, to wit, Indent No. 13/64 in respect of which your principal is interested and which document contains a statement which is false in material particular, namely, it stated that the work had been completed when in fact it had not been performed and which to your knowledge was intended to mislead your principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961."

A third accused, tried jointly with these two appellants, was penghulu of the Mukim of Ulu Langat. He was charged with abetment of the offence committed by the second appellant, was convicted and bound over, under section 294 of the Criminal Procedure Code, to be of good behaviour for one year. He has not appealed. Both the appellants now appeal against their conviction and sentence.

The facts not open to dispute are that on March 30, 1964 the second appellant caused an Indent No. 13/64 to be issued by the District Office to the first appellant for "construction of a drain 4′ x 3′ x 3′ for a distance of 30 chains, at $20 per chain, Dusun Tua, from Lot 2773 to Sungei Langat". No such drain was ever dug. Nevertheless, on April 6, 1964 the penghulu (who was the third accused) certified that the work had been completed and the District Officer (second appellant) indorsed on the indent an order to pay out the $600 to the contractor named, for a job of work that was wholly fictitious.

The evidence for the prosecution was not challenged except in a minor particular which is far from material. The appellants in their defence blamed the penghulu. The first appellant's case was that he wanted to earn some money without any exertion. He told the second appellant of his interest in public works contracts and the latter, who did not think it wrong to give work to his relative, on March 30, 1964 caused an indent to be issue to the first appellant for construction of the drain 3 furlongs in length. The latter, however, was about to go back to Johore the next day, so he asked the penghulu, who agreed, to carry out the work for him. One week later, the first appellant said he was informed by the penghulu that the work had been completed and the penghulu handed him the indent indorsed with the certificate of completion. On April 16, they collected the cheque for $600 which the second appellant cashed for the first appellant. There is no evidence that the first appellant paid, or offered to pay, the penghulu the labour charges which must have been incurred, had the work been actually completed. He repaid the $600 on the advice of the second appellant on May 2, 1964 after police investigation had started.

The evidence of the second appellant was that early in 1964 he had requested by the penghulu to have a drain dug in Dusun Tua as indicated to him on a lithograph plan of Ulu Langat. When the first appellant asked for a job he gave it to him on March 30, 1964. On that date the penghulu was at the District Office, and so the second appellant told him of the indent and asked him to see that the first appellant did the work properly. When in due course the indent was brought to him by the first appellant, with the certificate of the penghulu indorsed thereon, he (the second appellant) authorised payment on the strength of the certificate. He claimed that, had he known that the certificate was false, he would not have authorised payment.

The penghulu's case, briefly, was a denial of the allegations made by these appellants exculpating themselves at his expense. His explanation was that the second appellant had informed him that the work had been completed by the first appellant and he signed as he was told by his superior officer to do.

In his grounds of judgment the president gave no reasons for his decision beyond saying

that the story of these appellants "had cast no doubt on the prosecution story" and that he was convinced beyond reasonable doubt that there was a conspiracy between these two to cheat the Federation Government.

In *Balasingham* v. *Public Prosecutor* [1] Ismail Khan J. said:

"The trial court is under a statutory obligation under section 308 of the Criminal Procedure Code to transmit to the appellate court the grounds of decision which convey to my mind a reasoned judgment on the facts and the law, not merely the conclusion arrived at. The advantage of a 'speaking' judgment needs no emphasis."

Perhaps I should repeat what I said in *Augustine* v. *Public Prosecutor*: [2]

"I do not consider the simple *ipse dixit* of the magistrate sufficient to constitute proper grounds of judgment. It is not enough to use the words of Shelley, 'I cannot argue, I can only feel,' as the foundation of a judgment (see Holroyd Pearce L.J. in *Oliver* v. *Ashman* [3]). Except in the most straightforward type of cases, where the facts clearly establish all the necessary ingredients of an offence, it is the duty of the magistrate to state at least what were his findings of fact."

Of neither appellant was there any finding by the president that they knew or must have known, that the work was never carried out. It is not enough for him to state, in general terms, that he thought they were guilty.

In all the circumstances, I would allow this appeal, quash and conviction and order a retrial.

Appeal allowed.
Retrial ordered.

Solicitors: *Skrine & Co.* and *Athi Nahappan & Co.*

LEW FA v. SENG CHONG METAL WORKS LTD.

[O.C.J. (Abdul Aziz J.) January 10, 1966]

[K.L. — Civil Suit No. 276 of 1965]

Damages — Left hand — Amputation up to wrist leaving stump of thumb.

Machinery Ordinance, 1953 — Machinery (Driven Machinery) Regulations, 1959, reg . 31 — Breach of statutory duty — Contributory negligence.

The plaintiff brought an action for damages against the owner of a factory for breach of statutory duty. The plaintiff was engaged to operate a machine called a "press brake" for the making of window frames. It was alleged that the machine was a power press and that it was the failure to provide a guard as required under the regulations which caused the accident in this case, which resulted in the loss of the plaintiff's arm.

Held: (1) the machine was a power press and the failure to provide the guard was the dominant and effective cause of the accident;

(2) in the circumstances of the case it could not be said that the plaintiff had failed to take reasonable care of himself or that the carelessness or inadvertence on his part amounted to contributory negligence;

(3) having regard to the trend of awards in cases where a hand had been amputated and having regard also to the age of the plaintiff, general damages $43,000 (which includes $15,000 for loss of future earnings) were awarded.

[Editorial Note: As we go to press we received the judgment of the Federal Court (Thomson L.P., Ong Hock Thye F.J. and Gill J.) dismissing the defendants' appeal against the learned judge's finding of liability. There was no appeal on the question of quantum of damages. The Federal Court however observed that the award was an extremely generous one. The judgment of the Federal Court will be reported in due course.]

Cases referred to:—

(1) *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152; [1939] 3 All E.R. 723.

(2) *Nance* v. *British Columbia Electric Co. Ltd.* [1951] A.C. 611.

CIVIL SUIT.

Kam Woon Wah for the plaintiff.

H. E. Cashin for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: This action was brought by Lew Fa (an infant suing by his father and next friend Liew Choy) against the owner of a factory for damages for breach of statutory duty whereby the plaintiff's left hand was seriously injured by a machine which he was using at the time. There was also an additional allegation of breach of common law duty in the pleadings but this was subsequently abandoned by the plaintiff.

The facts are not in real dispute. On the date of the accident (18th December 1963) the plaintiff, who was approximately 17 years old and had been in the employment of the defendant company for three months, was engaged to operate a machine for the making of window frames. The machine was technically known as a bending and shearing machine which the manufacturers called 'press brake' because of the modifications and improvements made thereto particularly in the braking system. A photograph of the machine was shown to the court and the court was told that it could easily be operated by one operator, using one foot to press the foot pedal (starter) and two hands to insert a zinc plate or metal bar between the presses (dies). It was not an automatic machine in the sense that once the foot pedal was pressed the upper die would move up and down incessantly until another distinct operation stopped it. If the pedal was pressed down there would only be one up and down stroke and if released the die would stop at the position where the foot was lifted. On the date in question the plaintiff stated that he placed a zinc sheet into the machine between the upper and lower die. The zinc sheet was not properly inserted and as the machine was vibrating the sheet became displaced and as he was trying to correct it the upper die pressed downwards and crushed his left hand. Although it was not formally admitted it was not disputed that there was no guard to prevent the operator's hand from